IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 60 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

SONAL GUM INDUSTRIES

Appearance:

1. INCOME TAX REFERENCE No. 60 of 1986
MR BB NAIK with MR MR BHATT for Petitioner No. 1
NOTICE SERVED BY DS for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 27/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question is referred to us for our decision

in respect of assessment year 1979-80, arising from the decision dated 16.9.1985 in ITA No. 2443/Ahd/84 :-

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in setting aside the order of the Commissioner of Income-tax made u/s. 263 of the Income-tax Act, 1961 ?"

2. For arriving at the decision, the Tribunal relied on the order dated 16.3.1983 of the Special Bench of the Income Tax Appellate Tribunal in East Coast Marine Products P. Ltd. wherein it was held that the Commissioner of Income-tax cannot take action under Section 263 of the Act in a case where the assessment is framed under Section 143(3) read with Section 144B of the Act as the assessment order was passed under the directions of the Inspecting Assistant Commissioner.

3. At the hearing of this reference, Mr BB Naik, learned Standing Counsel for the revenue has invited our attention to the decision of the Andhra Pradesh High Court in CIT vs. East Coast Marine Products (P) Ltd., 181 ITR 314 wherein the Andhra Pradesh High Court held that where an Income-tax Officer passes an order after receiving directions from the Inspecting Assistant Commissioner under Section 144B of the Act, it is still an order made by him and the Commissioner can revise it.

4. Having heard the learned counsel for the revenue and upon perusal of the aforesaid judgment of the Andhra Pradesh High Court rendered by Hon'ble Mr Justice BP Jeevan Reddy (as His Lordship then was), we find that the question referred to us is squarely concluded by the aforesaid decision against the assessee.

5. We accordingly answer the question in the negative i.e. in favour of the revenue and against the assessee. The Tribunal shall proceed with the hearing of the appeal in light of the aforesaid opinion.

The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-